



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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OCT 19 2018

WATER QUALITY DIVISION
WYOMING

Ref: 8WP-SUI

Lily Barkau
Wyoming Department of Environmental Quality
Water Quality Division
200 West 17th Street
Cheyenne, Wyoming 82002

Re: Comments on Water Quality Division (WQD) Chapter 27 Rule Revisions
November 6, 2018, Wyoming Environmental Quality Council (EQC) Public Hearing

Dear Ms. Barkau:

The U.S. Environmental Protection Agency Region 8's Underground Injection Control Program is submitting the enclosed comments to the Wyoming Department of Environmental Quality (WDEQ) on its proposed Chapter 27 Water Quality Division (WQD) rule revisions that will be going before the Wyoming Environmental Quality Council (EQC) on November 6, 2018.

We have reviewed these proposed rule changes and have identified areas where the proposed regulations may not be as stringent as the Federal Underground Injection Control regulations. These are provided in the enclosed document under the heading "Differences".

Should you have questions regarding these comments, please contact Wendy Cheung of my staff at (303) 312-6242.

Sincerely,

Douglas Minter
UIC Unit Manager
Office of Water Protection

Enclosure

cc: Gina Thompson, DEQ, Water Quality

Code of Federal Regulations		Current Wyoming Statutes and Regulations		Differences
Section	Summary	Section	Summary	
144.52 (a)(7)(i)	<p>The permittee, including the transferor of a permit, must demonstrate and maintain financial responsibility and resources to close, plug, and abandon the well until:</p> <ol style="list-style-type: none"> 1) the well has been plugged and abandoned and the report submitted; or 2) the well has been converted; or 3) the transferor of the permit receives notice that the transferee has demonstrated financial responsibility. 	WQR Chapter 27 Section 19 and 7	<p>(a) The permittee of any Class I well shall demonstrate and maintain financial responsibility and resources to close, plug, abandon, reclaim, and maintain post-closure care for the underground injection operation in a manner prescribed by the Administrator. The permittee shall show evidence of such financial responsibility to the Administrator.</p> <p>(b) All Class I hazardous waste and non-hazardous waste underground injection facilities and Class V coalbed methane produced water underground injection facilities that are permitted, are issued a permit renewal, or are issued a permit transfer after July 1, 2018, shall provide financial assurance in accordance with W.S. 35-1-302(a)(viii).</p> <p>(f) Permittees shall provide financial assurance within ninety (90) days of the effective date of the rule or as described below, whichever is later: DRAFT 8/31/18 27-52 (A) Thirty (30) days prior to drilling of the permitted well(s) for new facilities; or (B) Prior to authorization of a permit renewal for existing facilities; or (C) Prior to authorization of a permit transfer.</p> <p>Section 7. Permit Processing Procedures. (d)(xv) Transfer of a permit is allowed only upon approval by the administrator..... (A) The proposed permit holder shall apply in writing as though that person was the original applicant for the permit and shall further agree to be bound by all of the terms and conditions of the permit</p>	<p>144.52 gives the authority to require FR for all Class V permits. Ch 27 Section 19 has authority to require FR only for Class V CBM.</p>

Code of Federal Regulations		Current Wyoming Statutes and Regulations		Differences
Section	Summary	Section	Summary	
144.52 (a)(7)(ii)	Evidence of financial responsibility may be by submission of a security bond or other adequate assurance. The owner or operator of a well injecting hazardous waste must comply with the financial responsibility requirements of subpart F of this part.	WQR Chapter 27 Section 19	Chapter 27, Section 19, Financial responsibility. (a)....The permittee shall show evidence of such financial responsibility to the administrator. (c) The amount of the funds available shall be no less than the amount identified as the estimated cost. (g) The permittee of each facility shall establish financial assurance for each new and existing Class I hazardous waste or non-hazardous waste underground injection facility or Class V coalbed methane produced water injection facility and shall choose from the qualifying instruments below: (i) Corporate surety bonds, (ii) Federally insured Automatically Renewable Certificates of Deposit (C.D.), (iii) U.S. Treasury Bonds, Bills, or Notes, (iv) Cash, (v) Letters of Credit, or (vi) A combination of the above instruments may be submitted. (i) In addition to the other requirements of this section, the permittee of a well injecting hazardous waste shall comply with the financial responsibility requirements of 40 CFR 144 Subpart F, in effect as of July 1, 2018.	Ch 27 Section 19 adopts wholly 144 Subpart F which is specific to Class I Hazardous wells. Additionally, WDEQ has included language that may conflict with Subpart F. Class I Hazardous Only: The list of viable instruments that can be used to demonstrate FR. This list contains additional instruments that are not included in Subpart F.

Code of Federal Regulations		Current Wyoming Statutes and Regulations		Differences
Section	Summary	Section	Summary	
Subpart F--Financial Responsibility: Class I Hazardous Wells 144.62(a)*	<p>\$ 144.62 Cost estimate for plugging and abandonment.</p> <p>The permittee must prepare an estimate of the cost of plugging and abandonment. The cost estimate must equal the cost of plugging and abandonment at the point in the facility's operating life where it would be most expensive.</p>	WQRR Chapter 27 Section 19	Chapter 27, Section 19. Financial responsibility. (c) At a minimum, the permittee shall prepare a written estimate, in current dollars, of the cost of plugging and abandonment of the well, surface reclamation, post-closure care, removal of infrastructure including but not limited to piping, above and below ground tanks, buildings, impoundments, access roads, fencing, electrical facilities, or any other physical materials used in the operation and maintenance of the injection well. (e)(ii) The permittee shall revise the cost estimate whenever a change in the plan increases the cost, and adjust the revised cost estimate for inflation. (f) The permittee of a well injecting hazardous waste must comply with the financial responsibility requirements of 40 CFR 144 Subpart F, in effect as of July 1, 2018.	For Class I Hazardous well only: See highlighted text
144.62(b) *	The estimate must be adjusted for inflation within 50 days after each anniversary of the date when the first cost estimate was prepared.	WQRR Chapter 27 Section 19	Chapter 27, Section 19. Financial responsibility. (e)(i) The permittee shall adjust the cost estimate for inflation within sixty (60) days after each anniversary of the date on which the first cost estimate was prepared. (f) The permittee of a well injecting hazardous waste must comply with the financial responsibility requirements of 40 CFR 144 Subpart F, in effect as of July 1, 2018.	For Class I Hazardous only: Sec 19 (e)(i) conflicts with (f) namely 30 vs 60 days.

Code of Federal Regulations		Current Wyoming Statutes and Regulations		Differences
Section	Summary	Section	Summary	
144.63 (a)-(Q)*	<p>§ 144.63 Financial assurance for plugging and abandonment.</p> <p>An owner or operator must choose from the following options to establish financial assurance for the plugging and abandonment of each Class I hazardous waste well:</p> <ul style="list-style-type: none"> Trust fund Surety bond for payment into a trust fund Surety bond for performance of plugging and abandonment Letter of credit Plugging and abandonment insurance Financial test 	WQRR Chapter 27 Section 19	<p>Chapter 27, Section 19, Financial responsibility.</p> <p>(g) The permittee of each facility shall establish financial assurance for each new and existing Class I hazardous waste or non-hazardous waste underground injection facility or Class V coalbed methane produced water injection facility and shall choose from the qualifying instruments below: (i) Corporate surety bonds, (ii) Federally insured Automatically Renewable Certificates of Deposit (C.D.), (iii) U.S. Treasury Bonds, Bills, or Notes, (iv) Cash, (v) Letters of Credit, or (vi) A combination of the above instruments may be submitted.</p> <p>(i) The permittee of a well injecting hazardous waste must comply with the financial responsibility requirements of 40 CRF 144 Subpart F, in effect as of July 1, 2018.</p>	<p>Same comment as the above 144.52 (a)(7)(ii).</p>
144.63(g)*	<p>An owner/operator may satisfy the requirements of this section by establishing more than one financial mechanism per well. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, and insurance. The combination of mechanisms must provide financial assurance for an amount at least equal to the adjusted plugging and abandonment cost. If an owner/operator uses a trust fund in combination with a surety bond or letter of credit, he may use that trust fund as the standby trust fund for the other mechanisms. The Regional Administrator may invoke any or all of the mechanisms to provide for plugging and abandonment.</p>	WQRR Chapter 27 Section 19	<p>Chapter 27, Section 19, Financial responsibility.</p> <p>(g) The permittee of each facility shall establish financial assurance for each new and existing Class I hazardous waste or non-hazardous waste underground injection facility or Class V coalbed methane produced water injection facility and shall choose from the qualifying instruments below: (i) Corporate surety bonds, (ii) Federally insured Automatically Renewable Certificates of Deposit (C.D.), (iii) U.S. Treasury Bonds, Bills, or Notes, (iv) Cash, (v) Letters of Credit, or (vi) A combination of the above instruments may be submitted.</p> <p>(i) The permittee of a well injecting hazardous waste must comply with the financial responsibility requirements of 40 CRF 144 Subpart F, in effect as of July 1, 2018.</p>	<p>Same comment as the above 144.52 (a)(7)(ii).</p>

Code of Federal Regulations		Current Wyoming Statutes and Regulations		Differences
Section	Summary	Section	Summary	
146.73	<p>§ 146.73 Financial responsibility for post-closure care. Operator must maintain financial responsibility for post closure care by using a trust fund, surety bond, letter of credit, financial test, insurance or corporate guarantee. This requirement is enforceable regardless of the fact that it is a permit condition.</p>	WQRR Chapter 27 Section 19 [Class 1 wells]	<p>Chapter 27, Section 19. Financial responsibility.</p> <p>(a) The permittee of any Class 1 well shall demonstrate and maintain financial responsibility and resources to close, plug, abandon, reclaim, and maintain post-closure care for the underground injection operation in a manner prescribed by the Administrator. The permittee shall show evidence of such financial responsibility to the Administrator.</p> <p>(d) The obligation to maintain financial responsibility survives the termination of a permit or the cessation of injection. The requirements to maintain financial responsibility is enforceable regardless of whether the requirement is a condition of the permit.</p> <p>(g) The permittee of each facility shall establish financial assurance for each new and existing Class 1 hazardous waste or non-hazardous waste underground injection facility or Class V coalbed methane produced water injection facility and shall choose from the qualifying instruments below: (i) Corporate surety bonds, (ii) Federally insured Automatically Renewable Certificates of Deposit (C.D.), (iii) U.S. Treasury Bonds, Bills, or Notes, (iv) Cash, (v) Letters of Credit, or (vi) A combination of the above instruments may be submitted.</p>	Same comment as the above 144.52 (a)(7)(ii).

